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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG NICHOLAS CLARK,

Defendant and Appellant.

2d Crim. No. B170504  
(Super. Ct. No. 1068460)  
(Santa Barbara County)

ORDER MODIFYING OPINION  
AND DENYING REHEARING

[CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on January 26, 2005, be modified as follows:

1. On page 1, the last two sentences of the first paragraph, beginning "We agree with the People . . ." are deleted and replaced with the following:

In response, the People contend that Clark waived his claim by failing to testify. The People further request that we correct the judgment to reflect a sentence of 25 years to life. We order the judgment so corrected, and otherwise affirm.

2. On page 2, the first sentence of footnote 2 is modified to read as follows:  
Further statutory references are to the Evidence Code unless otherwise stated.

3. On page 9, the final sentence of the opinion, "The judgment is affirmed" is deleted and replaced with the following:

Finally the People request that we correct the judgment to reflect a sentence of 25 years to life, as opposed to an indeterminate sentence of life with the possibility of parole. Clark does not oppose this request. As the People correctly note, the indeterminate sentence previously provided by Penal Code section 190 was eliminated when the statute was amended in November 1978, i.e., over a year before Clark committed the offense of which he was convicted, to provide for a sentence of 25 years to life where, as here, no special circumstances allegation was proved or found true. (Pen. Code, § 190.) Because the sentence imposed was unauthorized, we may consider and correct the matter even though no objection was made in the trial court. (See, e.g., *People v. Smith* (2001) 24 Cal.4th 849, 852.)

The judgment is modified to reflect a sentence of 25 years to life. The trial court shall amend the abstract of judgment accordingly and forward it to the Department of Corrections. The judgment is otherwise affirmed.

This modification changes the judgment.

Respondent's petition for rehearing is denied.